

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7701 OF 2004

1. Mrs.Santosh Ajit Sachdeva,)
Age 50 yrs., Occ:Business,)
2. M/s.Pearl Advertisings,)
3. M/s.Impression Advertising)
Pvt.Ltd., A company registered)
under the Companies Act, 1956,)
having office at 61, Anjali,)
6th Floor, Behind Radio Club,)
Colaba, Mumbai 400 005.)..Petitioners
(Org.Defendants)

Versus

Smt. Anoopi Shahani,)
Age 73 yrs. Housewife at present)
residing at Shrinivas, First Floor,)
134, Dr.M.B.Raut Road,)
Mumbai 400 028.)..Respondent
(Org.Plaintiff)

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Shri Y.S.Jahagirdar with Shri P.S.Dani for the
petitioners.

Shri A.K.Abhyankar with Shri Sandesh Deshpande and
Shri Vikas Mahangare for the respondent.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29TH NOVEMBER, 2004.

Oral Judgment:

1. Heard the learned advocates for the parties.
Perused the records. Rule. By consent, the Rule is
made returnable forthwith.

2. The petitioners challenge the order passed by the lower appellate Court allowing the appeal filed by the respondent - original plaintiff and decreeing the suit against the petitioners- original defendants on the ground of subletting of the premises.

3. Placing reliance in the decision of the Apex Court in the matter of **Parvinder Singh v. Renu Gautam & Ors.**, reported in (2004) 4 SCC 794, the impugned order is sought to be challenged on the ground that the finding about subletting of the premises is contrary to the materials on record, inasmuch as that the evidence on record clearly discloses that the major shareholding in the petitioner No.3 - company was of the petitioner No.1 and the petitioner No.1 had always been in the control and possession of the suit premises and the said fact has been totally overlooked by the lower appellate Court. Drawing attention to the pleadings of the parties as well as the deposition of the petitioner No.1, it was sought to be contended on behalf of the petitioners that the same disclose that she was the Managing Director of the petitioner No.3-company and in the year 1988, her brother, who was another Director of the petitioner No.3-company, was merely assisting the petitioner No.1 in the

business of the petitioner No.3- company in the suit premises.

4. Undisputedly, in answer to the suit for eviction on the ground of subletting, it was the specific case of the petitioners that in or about July, 1988, the petitioner No.1 decided that the petitioner No.3-company should conduct the business which was being carried on as the proprietary business in the name of M/s.Impression Advertising and Marketing in the suit premises. Apparently, therefore, there was a specific case pleaded by the petitioners themselves that the business in the suit premises was being carried out by the petitioner No.3, which is a company and for the same reason, is an independent entity different from the petitioner No.1 or the petitioner No.2. Her statement further discloses that during the life time of the petitioner No.1's husband, who had expired in the year 1984, he was not keeping good health and was unable to attend to his business, and for that reason, the brother of the petitioner No.1 was working with her husband. After the death of her husband, the petitioner No.1 had become the tenant in respect of the suit premises in the capacity as Proprietress of M/s.Impression Advertising and Marketing and her brother continued to

help the petitioner No.1 in conducting the business. It further discloses that after the death of the petitioner No.1's husband, when the company was formed, her brother became the Director of the said company along with the petitioner No.1 and thereafter the son of the petitioner No.1 was also inducted as one of the Directors.

5. Though the learned advocate for the petitioners tried to contend that the finding arrived at by the lower appellate Court on the ground of subletting the premises is contrary to the materials on record, the evidence to which attention was drawn in that regard clearly justifies the finding of subletting. The testimony of the petitioner No.1 clearly reveals that the plea regarding the control of the premises with the petitioner No.1, in spite of the fact that the business of the petitioner No.3 being carried out in the suit premises, was sought to be made good by producing the evidence in the form of the balance sheet of the company. Indeed, the testimony of the petitioner No.1 in the examination-in-chief, apart from the filing of the balance sheet of the company, nowhere discloses any other work or function having been performed by the petitioner No.1 in her capacity as Director of the company in relation to the

business of the company in the suit premises. Undoubtedly, in the cross-examination of the petitioner No.1, the Annual Returns for the year of 1988 to 1994 were produced at Exhibit-7 collectively. Referring to those Exhibits, the trial Court has held that the petitioner No.1 owns 1400 shares out of 2000 shares of the said Company, Shri Shivdutt Sharma owns 240 shares and Shri Gautam Sachdeva owns 250 shares of the said company. The trial Court has further held that Ms Shibani Sachdeva and M/s.Nikki Sachdeva own 60 and 50 shares respectively, whereas S/Shri Charles D'Souza was holding 90 shares and Bhooshan Prabhu was holding 50 shares of the said company. It is sought to be contended that the said finding regarding the shareholding of the company is with reference to the period subsequent to the year 1988 and in the year 1988 only the petitioner No.1 and her brother had shares in the said company. There is no factual foundation for such contention, besides it would disclose that, apart from the shareholding in the company and filing of the balance sheet, there is no other evidence brought on record by the petitioner No.1 to disclose her control over the business of the company in the suit premises. Mere statement that the petitioner No.1 has control over the business of the company in the suit premises cannot by itself amount

to an evidence in relation to such claim. It is not mere claim of the party but the conclusion which is to be arrived at by the Court on the basis of the facts to be established by a party in the course of evidence that is relevant for an appropriate decision in the matter. Undoubtedly, apart from the filing of the balance sheet, no other activity on the part of the petitioner No.1 has been disclosed to arrive at a finding regarding control of the petitioner No.1 over the business of the company in the suit premises. Once it is admitted by the petitioners themselves that since the year 1988, the company has been carrying on business in the suit premises and it is the claim by the petitioner No.1 that she was having full control over the suit premises in relation to the business carried out therein by the petitioner No.3, it was necessary for the petitioner No.1 to establish the same by producing necessary evidence in that regard. There being no such evidence produced on record, the logical conclusion that has to follow is that the business in the premises has been carried out by the petitioner No.3 and that the Petitioner No.3 being a separate entity, its presence in and control over the premises in relation to the business carried out therein being admitted by the petitioner No.1, the case of subletting stands established. As regards the

consideration for such occupation, it is not always possible to establish by producing direct evidence in that regard and the finding in that regard has to be arrived at on the basis of the other evidence placed on record and the inferences to be drawn therefrom.

6. The decision of the Supreme Court in the matter of **Pervinder Singh's case (supra)** does not support the case of the petitioners to justify the impugned order. The Apex Court therein has held thus:-

"The rent control legislations which extend many a protection to the tenant, also provide for grounds of eviction. Once such ground, most common in all the legislations, is sub-letting or parting with possession of the tenancy premises by the tenant. Rent control laws usually protect the tenant so long as he may himself use the premises but not his transferee inducted into possession of the premises, in breach of the contract or the law, which act is often done with the object of illegitimate profiteering or rack-renting. To defeat the provisions of law, a device is at times adopted by unscrupulous tenants and

sub- tenants of bringing into existence a deed of partnership which gives the relationship of tenant and sub-tenant an outward appearance of partnership while in effect what has come into existence is a sub-tenancy or parting with possession camouflaged under the cloak of partnership. Merely because a tenant has entered into a partnership he cannot necessarily be held to have sub-let the premises or parted with possession thereof in favour of his partners. If the tenant is actively associated with the partnership business and retains the use and control over the tenancy premises with him, maybe along with the partners, the tenant may not be said to have parted with possession. However, if the user and control of the tenancy premises has been parted with and deed of partnership has been drawn up as an indirect method of collecting the consideration for creation of sub- tenancy or for providing a cloak or cover to conceal a transaction not permitted by law, the court is not estopped from tearing the veil of partnership and finding out the real nature of transaction entered into between the tenant and the alleged sub-tenant."

7. Plain reading of the above ruling would disclose that merely because a documentary evidence in the form of partnership deed and for that matter, the documents pertaining to the formation of the company disclosing the shareholding pattern, are produced on record, they themselves would not lead to a conclusion that the tenant continues to have control over the tenanted premises. In fact, the Apex Court has clearly held that "if the tenant is actively associated with the partnership business" which discloses that apart from such documentary evidence, it is for the tenant to establish that he has not lost the control over the tenanted premises and this will have to be established by a cogent evidence regarding active participation of the tenant in the business of the company in the suit premises. Mere filing of the balance sheet by itself does not lead to a conclusion that the person who files return or balance sheet actively participates in day to day activities of the business of the firm in the leased premises. There has to be necessary evidence in that regard to justify the claim of the tenant that he has not lost the control over the tenanted premises. Being so, the decision clearly justifies a finding of sub-letting when the tenant himself admits that a third party,

viz. the company, is carrying on the business in the suit premises and at the same time fails to establish that he himself is actively participating in the business of the company in the suit premises.

8. Much was sought to be made out of the finding arrived at by the trial Court about the shareholding pattern of the petitioner No.3 and the finding that the 1400 shares out of 2000 shares of the company are owned by the petitioner No.1. As already observed above, merely because the major part of the shareholding of the company is in favour of the petitioner No.1, that by itself cannot lead to a conclusion that the actual control of the business of the petitioner No.3-company in the suit premises is being with the petitioner No.1, in the absence of any evidence in that regard. The question whether the tenant actively participates in the day to day activities of the business of the company in the leased premises or not, is to be decided on the basis of the cogent evidence brought on record by the tenant when the tenant admits the occupation of the company in the leased premises for business and the business of the company in the leased premises. The petitioners having failed in that regard, no fault can be found with the finding of sub-letting of the suit

premises. In fact, the evidence on record clearly reveals that the premises are in exclusive occupation of the petitioner No.3-company and further that such occupation is not without consideration. As there was no consent obtained from the landlord for inducting the petitioner No.3 in the suit premises, it is a clear case of illegal sub-letting of the premises, and the same therefore justifies the eviction in terms of the provisions of law comprised under Section 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and therefore, there is no case for interference in the impugned judgment in exercise of writ jurisdiction and hence, the petition fails and is hereby dismissed. Rule is discharged with no order as to costs.

9. On oral request by the learned advocate for the petitioners, the execution of the impugned order shall stand stayed till 28th February, 2005 subject to the petitioner No.1 and all adult members of her family as well as the Directors of the Petitioner No.3-company filing usual undertaking before the Registrar (Judl.) of this Court to the effect that the petitioner No.1 shall deliver vacant and peaceful possession of the suit premises to the respondent on or before 28th February, 2005 and meanwhile she shall

not part with the possession nor shall create any third party interest nor shall induct any third party in the suit premises. The undertaking to be filed within a period of three weeks from today, failing which the stay granted shall automatically stand vacated without being referred to the Court.
